



April 8, 2003

---

---

## ENGROSSED SENATE BILL No. 122

---

DIGEST OF SB 122 (Updated April 3, 2003 10:07 AM - DI 97)

**Citations Affected:** IC 27-1; IC 27-4; IC 27-8; IC 27-13; IC 34-13; noncode.

**Synopsis:** Grievance appeals and liability insurance. Allows a political subdivision to self-insure and cooperate with another political subdivision to cover liability risks. Amends certain reporting requirements with respect to political subdivision liability insurance. Provides that an accident and sickness insurer or a health maintenance organization that does not resolve an appeal within the statutory time frame commits an unfair and deceptive act or practice in the business of insurance. Requires quarterly reporting regarding resolution of grievance appeals.

**Effective:** July 1, 2003.

---

---

### Gard

(HOUSE SPONSORS — HERRELL, POND)

---

---

January 7, 2003, read first time and referred to Committee on Health and Provider Services.

February 20, 2003, amended, reported favorably — Do Pass.

February 24, 2003, read second time, amended, ordered engrossed.

February 25, 2003, engrossed. Read third time, passed. Yeas 48, nays 0.

#### HOUSE ACTION

March 4, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

April 7, 2003, amended, reported — Do Pass.

---

---

C  
o  
p  
y

ES 122—LS 6646/DI 97+



April 8, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## ENGROSSED SENATE BILL No. 122

---

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 27-1-20-21, AS AMENDED BY P.L.268-1999,  
2       SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2003]: Sec. 21. **(a)** Every company doing business in this state  
4       shall file with the department on or before March 1 in each year a  
5       financial statement for the year ending December 31 immediately  
6       preceding in a format in accordance with IC 27-1-3-13. For good and  
7       sufficient cause shown, the commissioner may grant to any individual  
8       company a reasonable extension of time not to exceed ninety (90) days  
9       within which such statement may be filed. Such statement shall be  
10      verified by the oaths of the president or a vice president and the  
11      secretary or an assistant secretary of the company. The statement of an  
12      alien company shall segregate and state separately its condition and  
13      transaction in the United States and such segregated and separated  
14      statement shall be verified by the oath of its resident manager or  
15      principal representative in the United States. The commissioner of  
16      insurance may, with the approval of the commission on public records,  
17      authorize the destruction of such annual statements which have been

ES 122—LS 6646/DI 97+



C  
o  
p  
y

on file for ~~two (2)~~ **ten (10)** years or more and microfilm copies of which have been made and filed.

**(b) A company that during the previous calendar year provided insurance described in Class 2(e), Class 2(f), or Class 2(h) of IC 27-1-5-1 to an Indiana political subdivision (as defined in IC 34-6-2-110) shall file with the department, as an additional part of the financial statement required under subsection (a), an exhibit of premiums and losses reflecting the company's financial results exclusively in connection with the insurance described in this subsection.**

**(c) The exhibit required under subsection (b) must:**

**(1) set forth figures indicating:**

**(A) direct premiums written;**

**(B) direct premiums earned;**

**(C) direct losses paid;**

**(D) direct losses incurred;**

**(E) direct losses unpaid;**

**(F) allocated loss adjustment expenses; and**

**(G) unallocated loss adjustment expenses;**

**for the year of the financial statement in connection with the insurance described in subsection (b); and**

**(2) report:**

**(A) the number of jury awards paid under the provisions of the insurance described in subsection (b) and the total amount paid for all jury awards;**

**(B) the number of court awards, not including jury awards, paid under the provisions of the insurance described in subsection (b); and**

**(C) the number of negotiated settlements paid under the provisions of the insurance described in subsection (b) and the total amount paid for all negotiated settlements;**

**during the calendar year.**

**(d) The information described in subsection (c) must be reported in each year after 2003.**

SECTION 2. IC 27-1-22-2.5, AS AMENDED BY P.L.132-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2.5. (a) As used in this chapter, "exempt commercial policyholder" means an entity that:

**(1) makes written certification to the entity's insurer on a form prescribed by the department that the entity is an exempt commercial policyholder;**

**(2) has purchased the policy of insurance through an insurance**

C  
o  
p  
y



agent licensed under IC 27-1-15.6 or IC 27-1-15.8; and

(3) meets any three (3) of the following criteria:

(A) Has a net worth of more than twenty-five million dollars (\$25,000,000) at the time the policy of insurance is issued.

(B) Has a net revenue or sales of more than fifty million dollars (\$50,000,000) in the preceding fiscal year.

(C) Has more than twenty-five (25) employees per individual company or fifty (50) employees per holding company aggregate at the time the policy of insurance is issued.

(D) Has aggregate annual commercial insurance premiums, excluding any worker's compensation and professional liability insurance premiums, of more than seventy-five thousand dollars (\$75,000) in the preceding fiscal year.

(E) Is a nonprofit ~~or a public~~ entity with an annual budget of at least twenty-five million dollars (\$25,000,000) or assets of at least twenty-five million dollars (\$25,000,000) in the preceding fiscal year.

(F) Procures commercial insurance with the services of a risk manager.

An entity meets the written certification requirement under subdivision (1) if the entity provides a copy of a certification previously submitted under subdivision (1) and if there has been no significant material change in the entity's status. **The term does not include a political subdivision (as defined in IC 34-6-2-110).**

(b) As used in this chapter, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager may be:

(1) a full-time employee of an exempt commercial policyholder who is qualified through education and experience or training and experience; or

(2) a person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.

SECTION 3. IC 27-4-1-4, AS AMENDED BY P.L.130-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be



- 1 issued or the benefits or advantages promised thereby or the  
 2 dividends or share of the surplus to be received thereon;  
 3 (B) making any false or misleading statement as to the  
 4 dividends or share of surplus previously paid on similar  
 5 policies;  
 6 (C) making any misleading representation or any  
 7 misrepresentation as to the financial condition of any insurer,  
 8 or as to the legal reserve system upon which any life insurer  
 9 operates;  
 10 (D) using any name or title of any policy or class of policies  
 11 misrepresenting the true nature thereof; or  
 12 (E) making any misrepresentation to any policyholder insured  
 13 in any company for the purpose of inducing or tending to  
 14 induce such policyholder to lapse, forfeit, or surrender his  
 15 insurance.
- 16 (2) Making, publishing, disseminating, circulating, or placing  
 17 before the public, or causing, directly or indirectly, to be made,  
 18 published, disseminated, circulated, or placed before the public,  
 19 in a newspaper, magazine, or other publication, or in the form of  
 20 a notice, circular, pamphlet, letter, or poster, or over any radio or  
 21 television station, or in any other way, an advertisement,  
 22 announcement, or statement containing any assertion,  
 23 representation, or statement with respect to any person in the  
 24 conduct of his insurance business, which is untrue, deceptive, or  
 25 misleading.
- 26 (3) Making, publishing, disseminating, or circulating, directly or  
 27 indirectly, or aiding, abetting, or encouraging the making,  
 28 publishing, disseminating, or circulating of any oral or written  
 29 statement or any pamphlet, circular, article, or literature which is  
 30 false, or maliciously critical of or derogatory to the financial  
 31 condition of an insurer, and which is calculated to injure any  
 32 person engaged in the business of insurance.
- 33 (4) Entering into any agreement to commit, or individually or by  
 34 a concerted action committing any act of boycott, coercion, or  
 35 intimidation resulting or tending to result in unreasonable  
 36 restraint of, or a monopoly in, the business of insurance.
- 37 (5) Filing with any supervisory or other public official, or making,  
 38 publishing, disseminating, circulating, or delivering to any person,  
 39 or placing before the public, or causing directly or indirectly, to  
 40 be made, published, disseminated, circulated, delivered to any  
 41 person, or placed before the public, any false statement of  
 42 financial condition of an insurer with intent to deceive. Making

C  
o  
p  
y



any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage

C  
o  
p  
y



1 to aircraft, or against liability arising out of the ownership,  
 2 maintenance, or use of any aircraft, or of vessels or craft,  
 3 their cargoes, marine builders' risks, marine protection and  
 4 indemnity, or other risks commonly insured under marine,  
 5 as distinguished from inland marine, insurance; or  
 6 (iii) policies or contracts of any other kind or kinds of  
 7 insurance whatsoever.

8 However, nothing contained in clause (C) shall be construed to  
 9 apply to any of the kinds of insurance referred to in clauses (A)  
 10 and (B) nor to reinsurance in relation to such kinds of insurance.  
 11 Nothing in clause (A), (B), or (C) shall be construed as making or  
 12 permitting any excessive, inadequate, or unfairly discriminatory  
 13 charge or rate or any charge or rate determined by the department  
 14 or commissioner to meet the requirements of any other insurance  
 15 rate regulatory law of this state.

16 (8) Except as otherwise expressly provided by law, knowingly  
 17 permitting or offering to make or making any contract or policy  
 18 of insurance of any kind or kinds whatsoever, including but not in  
 19 limitation, life annuities, or agreement as to such contract or  
 20 policy other than as plainly expressed in such contract or policy  
 21 issued thereon, or paying or allowing, or giving or offering to pay,  
 22 allow, or give, directly or indirectly, as inducement to such  
 23 insurance, or annuity, any rebate of premiums payable on the  
 24 contract, or any special favor or advantage in the dividends,  
 25 savings, or other benefits thereon, or any valuable consideration  
 26 or inducement whatever not specified in the contract or policy; or  
 27 giving, or selling, or purchasing or offering to give, sell, or  
 28 purchase as inducement to such insurance or annuity or in  
 29 connection therewith, any stocks, bonds, or other securities of any  
 30 insurance company or other corporation, association, limited  
 31 liability company, or partnership, or any dividends, savings, or  
 32 profits accrued thereon, or anything of value whatsoever not  
 33 specified in the contract. Nothing in this subdivision and  
 34 subdivision (7) shall be construed as including within the  
 35 definition of discrimination or rebates any of the following  
 36 practices:

37 (A) Paying bonuses to policyholders or otherwise abating their  
 38 premiums in whole or in part out of surplus accumulated from  
 39 nonparticipating insurance, so long as any such bonuses or  
 40 abatement of premiums are fair and equitable to policyholders  
 41 and for the best interests of the company and its policyholders.

42 (B) In the case of life insurance policies issued on the

C  
O  
P  
Y



1 industrial debit plan, making allowance to policyholders who  
 2 have continuously for a specified period made premium  
 3 payments directly to an office of the insurer in an amount  
 4 which fairly represents the saving in collection expense.

5 (C) Readjustment of the rate of premium for a group insurance  
 6 policy based on the loss or expense experience thereunder, at  
 7 the end of the first year or of any subsequent year of insurance  
 8 thereunder, which may be made retroactive only for such  
 9 policy year.

10 (D) Paying by an insurer or agent thereof duly licensed as such  
 11 under the laws of this state of money, commission, or  
 12 brokerage, or giving or allowing by an insurer or such licensed  
 13 agent thereof anything of value, for or on account of the  
 14 solicitation or negotiation of policies or other contracts of any  
 15 kind or kinds, to a broker, agent, or solicitor duly licensed  
 16 under the laws of this state, but such broker, agent, or solicitor  
 17 receiving such consideration shall not pay, give, or allow  
 18 credit for such consideration as received in whole or in part,  
 19 directly or indirectly, to the insured by way of rebate.

20 (9) Requiring, as a condition precedent to loaning money upon the  
 21 security of a mortgage upon real property, that the owner of the  
 22 property to whom the money is to be loaned negotiate any policy  
 23 of insurance covering such real property through a particular  
 24 insurance agent or broker or brokers. However, this subdivision  
 25 shall not prevent the exercise by any lender of its or his right to  
 26 approve or disapprove of the insurance company selected by the  
 27 borrower to underwrite the insurance.

28 (10) Entering into any contract, combination in the form of a trust  
 29 or otherwise, or conspiracy in restraint of commerce in the  
 30 business of insurance.

31 (11) Monopolizing or attempting to monopolize or combining or  
 32 conspiring with any other person or persons to monopolize any  
 33 part of commerce in the business of insurance. However,  
 34 participation as a member, director, or officer in the activities of  
 35 any nonprofit organization of agents or other workers in the  
 36 insurance business shall not be interpreted, in itself, to constitute  
 37 a combination in restraint of trade or as combining to create a  
 38 monopoly as provided in this subdivision and subdivision (10).  
 39 The enumeration in this chapter of specific unfair methods of  
 40 competition and unfair or deceptive acts and practices in the  
 41 business of insurance is not exclusive or restrictive or intended to  
 42 limit the powers of the commissioner or department or of any

C  
o  
p  
y



court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or

C  
O  
P  
Y



medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

**(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.**

SECTION 4. IC 27-8-28-17, AS AMENDED BY P.L.1-2002, SECTION 116, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) An insurer shall establish written policies and procedures for the timely resolution of appeals of grievance decisions. The procedures for registering and responding to oral and written appeals of grievance decisions must include the following:

(1) Written or oral acknowledgment of the appeal not more than five (5) business days after the appeal is filed.



C  
O  
P  
Y

(2) Documentation of the substance of the appeal and the actions taken.

(3) Investigation of the substance of the appeal, including any aspects of clinical care involved.

(4) Notification to the covered individual:

(A) of the disposition of an appeal; and

(B) that the covered individual may have the right to further remedies allowed by law.

(5) Standards for timeliness in:

(A) responding to an appeal; and

(B) providing notice to covered individuals of:

(i) the disposition of an appeal; and

(ii) the right to initiate an external grievance review under IC 27-8-29;

that accommodate the clinical urgency of the situation.

(b) In the case of an appeal of a grievance decision described in section 6(1) or 6(2) of this chapter, an insurer shall appoint a panel of one (1) or more qualified individuals to resolve an appeal. The panel must include one (1) or more individuals who:

(1) have knowledge of the medical condition, procedure, or treatment at issue;

(2) are licensed in the same profession and have a similar specialty as the provider who proposed or delivered the health care procedure, treatment, or service;

(3) are not involved in the matter giving rise to the appeal or in the initial investigation of the grievance; and

(4) do not have a direct business relationship with the covered individual or the health care provider who previously recommended the health care procedure, treatment, or service giving rise to the grievance.

(c) An appeal of a grievance decision must be resolved:

(1) as expeditiously as possible, reflecting the clinical urgency of the situation; and

(2) not later than forty-five (45) days after the appeal is filed.

**An insurer that violates this subsection commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.**

(d) If an insurer violates subsection (c), the insurer shall file a report with the department during the quarter in which the violation occurred concerning the insurer's compliance with subsection (c). The report must include the following:

(1) The number of appealed grievance decisions that were not

C  
O  
P  
Y



resolved as required under subsection (c).

**(2) The reason each appeal described in subdivision (1) was not resolved.**

~~(d)~~ **(e)** An insurer shall allow a covered individual the opportunity to:

(1) appear in person before; or

(2) if unable to appear in person, otherwise appropriately communicate with;

the panel appointed under subsection (b).

~~(e)~~ **(f)** An insurer shall notify a covered individual in writing of the resolution of an appeal of a grievance decision within five (5) business days after completing the investigation. The appeal resolution notice must include the following:

(1) A statement of the decision reached by the insurer.

(2) A statement of the reasons, policies, and procedures that are the basis of the decision.

(3) Notice of the covered individual's right to further remedies allowed by law, including the right to external grievance review by an independent review organization under IC 27-8-29.

(4) The department, address, and telephone number through which a covered individual may contact a qualified representative to obtain more information about the decision or the right to an external grievance review.

SECTION 5. IC 27-13-10-8, AS AMENDED BY P.L.133-1999, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) A health maintenance organization shall establish written policies and procedures for the timely resolution of appeals of grievance decisions. The procedures for registering and responding to oral and written appeals of grievance decisions must include the following:

(1) Acknowledgment of the appeal, orally or in writing, within three (3) business days after receipt of the appeal being filed.

(2) Documentation of the substance of the appeal and the actions taken.

(3) Investigation of the substance of the appeal, including any aspects of clinical care involved.

(4) Notification to enrollees or subscribers of the disposition of the appeal and that the enrollee or subscriber may have the right to further remedies allowed by law.

(5) Standards for timeliness in responding to appeals and providing notice to enrollees or subscribers of the disposition of the appeal and the right to initiate an external appeals process that

C  
o  
p  
y



accommodate the clinical urgency of the situation.

(b) The health maintenance organization shall appoint a panel of qualified individuals to resolve an appeal. An individual may not be appointed to the panel who has been involved in the matter giving rise to the complaint or in the initial investigation of the complaint. Except for grievances that have previously been appealed under IC 27-8-17, in the case of an appeal from the proposal, refusal, or delivery of a health care procedure, treatment, or service, the health maintenance organization shall appoint one (1) or more individuals to the panel to resolve the appeal. The panel must include one (1) or more individuals who:

(1) have knowledge in the medical condition, procedure, or treatment at issue;

(2) are in the same licensed profession as the provider who proposed, refused, or delivered the health care procedure, treatment, or service;

(3) are not involved in the matter giving rise to the appeal or the previous grievance process; and

(4) do not have a direct business relationship with the enrollee or the health care provider who previously recommended the health care procedure, treatment, or service giving rise to the grievance.

(c) An appeal of a grievance decision must be resolved as expeditiously as possible and with regard to the clinical urgency of the appeal. However, an appeal must be resolved not later than forty-five (45) days after the appeal is filed. **A health maintenance organization that violates this subsection commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.**

(d) **If a health maintenance organization violates subsection (c), the health maintenance organization shall file a report with the department during the quarter in which the violation occurred concerning the insurer's compliance with subsection (c). The report must include the following:**

**(1) The number of appealed grievance decisions that were not resolved as required under subsection (c).**

**(2) The reason each appeal described in subdivision (1) was not resolved.**

(e) A health maintenance organization shall allow enrollees and subscribers the opportunity to appear in person at the panel or to communicate with the panel through appropriate other means if the enrollee or subscriber is unable to appear in person.

~~(e)~~ (f) A health maintenance organization shall notify the enrollee or subscriber in writing of the resolution of the appeal of a grievance



1 within five (5) business days after completing the investigation. The  
 2 grievance resolution notice must contain the following:

- 3 (1) The decision reached by the health maintenance organization.
- 4 (2) The reasons, policies, or procedures that are the basis of the  
 5 decision.
- 6 (3) Notice of the enrollee's or subscriber's right to further  
 7 remedies allowed by law, including the right to review by an  
 8 independent review organization under IC 27-13-10.1.
- 9 (4) The department, address, and telephone number through  
 10 which an enrollee may contact a qualified representative to obtain  
 11 more information about the decision or the right to an appeal.

12 SECTION 6. IC 34-13-3-20, AS AMENDED BY P.L.192-2001,  
 13 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14 JULY 1, 2003]: Sec. 20. (a) A political subdivision may:

- 15 (1) purchase insurance;
- 16 (2) **maintain a program of self-insurance; or**
- 17 (3) **act in concert with another political subdivision to provide**  
 18 **a program, a pool, a trust, or an agreement;**

19 to cover the liability of itself or its employees, including a member of  
 20 a board, a committee, a commission, an authority, or another  
 21 instrumentality of a governmental entity. Any liability insurance so  
 22 purchased shall be purchased by invitation to and negotiation with  
 23 providers of insurance and may be purchased with other types of  
 24 insurance. If such a policy is purchased, the terms of the policy govern  
 25 the rights and obligations of the political subdivision and the insurer  
 26 with respect to the investigation, settlement, and defense of claims or  
 27 suits brought against the political subdivision or its employees covered  
 28 by the policy. However, the insurer may not enter into a settlement for  
 29 an amount that exceeds the insurance coverage without the approval of  
 30 the mayor, if the claim or suit is against a city, or the governing body  
 31 of any other political subdivision, if the claim or suit is against such  
 32 political subdivision.

33 (b) The state may not purchase insurance to cover the liability of the  
 34 state or its employees. This subsection does not prohibit any of the  
 35 following:

- 36 (1) The requiring of contractors to carry insurance.
- 37 (2) The purchase of insurance to cover losses occurring on real  
 38 property owned by the public employees' retirement fund or the  
 39 Indiana state teachers' retirement fund.
- 40 (3) The purchase of insurance by a separate body corporate and  
 41 politic to cover the liability of itself or its employees.
- 42 (4) The purchase of casualty and liability insurance for foster



C  
O  
P  
Y

1 parents (as defined in IC 27-1-30-4) on a group basis.  
 2 SECTION 7. IC 27-1-20-34 IS REPEALED [EFFECTIVE JULY 1,  
 3 2003].  
 4 SECTION 8. [EFFECTIVE JULY 1, 2003] (a) **IC 27-8-28-17 and**  
 5 **IC 27-13-10-8, both as amended by this act, apply to an appeal of**  
 6 **a grievance that is filed after June 30, 2003.**  
 7 (b) This SECTION expires June 30, 2006.

C  
o  
p  
y



## COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 122, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.130-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or

C  
o  
p  
y



indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of

C  
o  
p  
y



premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

- (i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
- (ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
- (iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or

C  
O  
P  
Y



giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

- (A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.
- (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.
- (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.
- (D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.
- (9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the

C  
o  
p  
y



borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

- (A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.
- (B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.
- (C) Title insurance.
- (D) Insurance written in connection with an indebtedness and

C  
o  
p  
y



intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

- (i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;
- (ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;
- (iii) insures against baggage loss during the flight to which the ticket relates; or
- (iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan

C  
O  
P  
Y



coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

**(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision."**

Page 2, line 26, delete "," and insert ".".

Page 2, delete lines 27 through 33, begin a new line blocked left and insert:

**"An insurer that violates this subsection commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4.**

**(d) If an insurer violates subsection (c), the insurer shall file a report with the department during the quarter in which the violation occurred concerning the insurer's compliance with subsection (c). The report must include the following:**

**(1) The number of appealed grievance decisions that were not resolved as required under subsection (c).**

**(2) The reason each appeal described in subdivision (1) was not resolved."**

Page 2, line 34, strike "(d)" and insert "(e)".

Page 2, line 39, strike "(e)" and insert "(f)".

Page 4, line 12, delete ", unless the enrollee or subscriber" and insert **"A health maintenance organization that violates this subsection commits an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4."**

Page 4, delete lines 13 through 18.

Page 4, line 19, after "(d)" insert **"A health maintenance organization shall file a quarterly report with the department concerning the insurer's compliance with subsection (c). The report must include the following:**

**(1) The number of appealed grievance decisions that were not resolved as required under subsection (c).**

**(2) The reason each appeal described in subdivision (1) was not resolved.**

**(e)".**

Page 4, line 23, strike "(e)" and insert "(f)".

C  
o  
p  
y



Renumber all SECTIONS consecutively.  
and when so amended that said bill do pass.

(Reference is to SB 122 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 8, Nays 0.

C  
o  
p  
y



SENATE MOTION

Mr. President: I move that Senate Bill 122 be amended to read as follows:

Page 10, line 19, delete "A" and insert "**If a**".

Page 10, line 19, after "organization" insert "**violates subsection (c), the health maintenance organization**".

Page 10, line 19, delete "quarterly".

Page 10, line 20, after "department" insert "**during the quarter in which the violation occurred**".

(Reference is to SB 122 as printed February 21, 2003.)

GARD

C  
o  
p  
y



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred Senate Bill 122, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-1-20-21, AS AMENDED BY P.L.268-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 21. **(a)** Every company doing business in this state shall file with the department on or before March 1 in each year a financial statement for the year ending December 31 immediately preceding in a format in accordance with IC 27-1-3-13. For good and sufficient cause shown, the commissioner may grant to any individual company a reasonable extension of time not to exceed ninety (90) days within which such statement may be filed. Such statement shall be verified by the oaths of the president or a vice president and the secretary or an assistant secretary of the company. The statement of an alien company shall segregate and state separately its condition and transaction in the United States and such segregated and separated statement shall be verified by the oath of its resident manager or principal representative in the United States. The commissioner of insurance may, with the approval of the commission on public records, authorize the destruction of such annual statements which have been on file for ~~two (2)~~ **ten (10)** years or more and microfilm copies of which have been made and filed.

**(b) A company that during the previous calendar year provided insurance described in Class 2(e), Class 2(f), or Class 2(h) of IC 27-1-5-1 to an Indiana political subdivision (as defined in IC 34-6-2-110) shall file with the department, as an additional part of the financial statement required under subsection (a), an exhibit of premiums and losses reflecting the company's financial results exclusively in connection with the insurance described in this subsection.**

**(c) The exhibit required under subsection (b) must:**

- (1) set forth figures indicating:**
  - (A) direct premiums written;**
  - (B) direct premiums earned;**
  - (C) direct losses paid;**
  - (D) direct losses incurred;**
  - (E) direct losses unpaid;**
  - (F) allocated loss adjustment expenses; and**



C  
o  
p  
y

**(G) unallocated loss adjustment expenses;  
for the year of the financial statement in connection with the  
insurance described in subsection (b); and**

**(2) report:**

**(A) the number of jury awards paid under the provisions  
of the insurance described in subsection (b) and the total  
amount paid for all jury awards;**

**(B) the number of court awards, not including jury  
awards, paid under the provisions of the insurance  
described in subsection (b); and**

**(C) the number of negotiated settlements paid under the  
provisions of the insurance described in subsection (b) and  
the total amount paid for all negotiated settlements;**

**during the calendar year.**

**(d) The information described in subsection (c) must be  
reported in each year after 2003.**

SECTION 2. IC 27-1-22-2.5, AS AMENDED BY P.L.132-2001,  
SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2003]: Sec. 2.5. (a) As used in this chapter, "exempt  
commercial policyholder" means an entity that:

(1) makes written certification to the entity's insurer on a form  
prescribed by the department that the entity is an exempt  
commercial policyholder;

(2) has purchased the policy of insurance through an insurance  
agent licensed under IC 27-1-15.6 or IC 27-1-15.8; and

(3) meets any three (3) of the following criteria:

(A) Has a net worth of more than twenty-five million dollars  
(\$25,000,000) at the time the policy of insurance is issued.

(B) Has a net revenue or sales of more than fifty million  
dollars (\$50,000,000) in the preceding fiscal year.

(C) Has more than twenty-five (25) employees per individual  
company or fifty (50) employees per holding company  
aggregate at the time the policy of insurance is issued.

(D) Has aggregate annual commercial insurance premiums,  
excluding any worker's compensation and professional liability  
insurance premiums, of more than seventy-five thousand  
dollars (\$75,000) in the preceding fiscal year.

(E) Is a nonprofit ~~or a public~~ entity with an annual budget of  
at least twenty-five million dollars (\$25,000,000) or assets of  
at least twenty-five million dollars (\$25,000,000) in the  
preceding fiscal year.

(F) Procures commercial insurance with the services of a risk

C  
o  
p  
y



manager.

An entity meets the written certification requirement under subdivision (1) if the entity provides a copy of a certification previously submitted under subdivision (1) and if there has been no significant material change in the entity's status. **The term does not include a political subdivision (as defined in IC 34-6-2-110).**

(b) As used in this chapter, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager may be:

- (1) a full-time employee of an exempt commercial policyholder who is qualified through education and experience or training and experience; or
- (2) a person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder."

Page 11, between lines 2 and 3, begin a new paragraph and insert: "SECTION 7. IC 34-13-3-20, AS AMENDED BY P.L.192-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 20. (a) A political subdivision may:

- (1) purchase insurance;
- (2) maintain a program of self-insurance; or**
- (3) act in concert with another political subdivision to provide a program, a pool, a trust, or an agreement;**

to cover the liability of itself or its employees, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the political subdivision or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount that exceeds the insurance coverage without the approval of the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may not purchase insurance to cover the liability of the state or its employees. This subsection does not prohibit any of the following:

- (1) The requiring of contractors to carry insurance.

ES 122—LS 6646/DI 97+



C  
o  
p  
y

(2) The purchase of insurance to cover losses occurring on real property owned by the public employees' retirement fund or the Indiana state teachers' retirement fund.

(3) The purchase of insurance by a separate body corporate and politic to cover the liability of itself or its employees.

(4) The purchase of casualty and liability insurance for foster parents (as defined in IC 27-1-30-4) on a group basis.

SECTION 8. IC 27-1-20-34 IS REPEALED [EFFECTIVE JULY 1, 2003]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 122 as reprinted February 25, 2003.)

FRY, Chair

Committee Vote: yeas 8, nays 6.

C  
o  
p  
y

